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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 1051

DORCHESTER GAS PRODUCING COMPANY, PETITIONER

v.

FEDERAL POWER COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE FEDERAL POWER COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals in No. 15295 (Pet. App. 8a–9a) is reported at 353 F. 2d 162; the order of the Federal Power Commission is reported at 32 FPC 1339 (J. App. 39a–43a),[1] and the order denying reconsideration (J. App. 65a–68a) is reported at 33 FPC 88. The order of the court of appeals in No. 15518 (Pet. App. 10a–11a), is not yet reported; also, the order of the Federal Power Commission denying appeal (Pet. App. 12a–14a) and the order denying reconsideration (Pet. App. 15a) are not yet reported. The hearing examiner's ruling (J. App. 104a–105a) is not reported.

[1] J. App. refers to the Joint Appendix in No. 15295, nine copies of which were filed with the petition (Pet. App. 11a).

JURISDICTION

The opinion of the court of appeals in No. 15295 was filed on November 23, 1965 (Pet. App. 8a–9a), and its decree was entered on January 17, 1966 (Pet. App. 9a–10a). The order of the court of appeals in No. 15518 was entered on January 19, 1966 (Pet. App. 10a–11a). The petition for a writ of certiorari was filed on February 21, 1966. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1) and Section 19(b) of the Natural Gas Act, 15 U.S.C. 717r(b).

QUESTIONS PRESENTED

1. Whether the Federal Power Commission abused its discretion in declining to initiate an investigation of petitioner's rates, under Section 5(a) of the Natural Gas Act, when such rates were already the subject of inquiry in a pending area rate investigation.

2. Whether the court of appeals erred in dismissing as premature a petition to review an order of the Federal Power Commission denying petitioner's request for a ruling as to its right to introduce evidence of its cost of service in a pending area rate investigation.

STATUTE INVOLVED

The relevant statutory provisions are set forth in the appendix to the petition (Pet. App. 1a–7a).

STATEMENT

Petitioner, Dorchester Gas Producing Company, is a Delaware corporation engaged in the production, gathering and sale of natural gas in Texas, Oklahoma, Kansas, Mississippi and other States. It sells

approximately 28 million Mcf annually under seven rate schedules on file with the Federal Power Commission. Its most significant sales are to Northern Natural Gas Company and Natural Gas Pipeline Company of America, to each of which it sells approximately 12 million Mcf annually. The sales to Northern (under Rate Schedule No. 1) are at the rate of 17.598 cents per Mcf and are subject to refund in Docket No. G–18671, having been increased from 8 cents. The sales to Natural (under Rate Schedule No. 2) are at the rate of 7.1463, which is the maximum rate provided in Dorchester's long term contract with Natural and which Natural is unwilling to increase.

On May 20, 1964, Dorchester filed a petition (J. App. 13a–33a) requesting "the Commission to issue, on its own motion and pursuant to Section 5(a) of the Natural Gas Act, an order instituting an investigation" to determine the justness and reasonableness of all of petitioner's rates subject to the jurisdiction of the Commission. In support of its petition, Dorchester claimed that its revenues from its jurisdictional sales were appreciably less than its cost of service, that it was able to continue its operations only because of the forebearance of its creditors, and that, in particular, the rate it received on sales to Natural were so low as to affect adversely the public interest.[2]

[2] According to Moody's Industrial Manual, Dorchester's net profits for the years 1962, 1963 and 1964 were, respectively, $399,052 (53 cents per share), $565,105 (75 cents per share) and $679,199 (86 cents per share), and its current assets ex-

By order issued November 19, 1964 (J. App. 39a–43a, 32 FPC 1339), the Commission denied Dorchester's petition. The Commission pointed out (J. App. 40a) that all of petitioner's rates, with the exception of Rate Schedule No. 5, are the subject of area rate proceedings.[3] Rate Schedules Nos. 1, 2, 4, 6, and 7 (J. App. 19a–24a) are subject, either under Section 4(e) or Section 5(a) of the Natural Gas Act, to the Hugoton-Anadarko area rate proceeding, and the just and reasonable rate under Rate Schedule No. 3 was determined in the landmark Permian Basin area rate proceeding (J. App. 40a).[4] In a subsequent order, denying reconsideration, the Commission emphasized

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ceeded its current liabilities in each of those years by, approximately $400,000, $1,500,000 and $2,500,000, respectively. In October 1964 it issued 63,110 shares of 5½ percent preferred stock in exchange for the net assets of Monarch Tile Mfg., Inc. Investment Dealers Digest, June 14, 1965, p. 43, reports Dorchester's earnings in the first quarter of 1965 as $272,000 or 36 cents per share as against $188,000 or 25 cents per share in the first quarter of 1964. These figures reflect the overall operations of the company, both jurisdictional and nonjurisdictional.

[3] Sales under Rate Schedule No. 5 are small (131,656 Mcf in 1963) (J. App. 22a–23a). Petitioner raises no issue here as to this sale.

[4] *Area Rate Proceeding*, Docket No. AR61–1, Opinion No. 468, issued August 5, 1965, and Opinion No. 468–A, issued October 4, 1965, pending on petitions for review in the Tenth Circuit *sub nom. Skelly Oil Co., et al.* v. *Federal Power Commission* (C.A. 10 No. 8385, *et al.*).

The Hugoton-Anadarko area rate proceeding is one of the four area rate proceedings that have been initiated by the Commission. The first, covering the Permian area, was decided August 5, 1965. In these four area proceedings the Commission will fix the just and reasonable rates for about 75 percent of the gas flowing in interstate commerce.

that Dorchester will receive full consideration of its claims to relief under Section 5(a) in the Hugoton-Anadarko area rate proceeding (J. App. 67a; 33 FPC 88–89).

While denying Dorchester's primary request, the Commission's November 19 order (J. App. 42a–43a) did provide relief to Dorchester with respect to funds tied up by the trust agreement covering its collection of rates potentially subject to refund at the conclusion of pending proceedings (Docket Nos. G–18671 and RI60–11). It indicated that, in lieu of the trust arrangement,[5] it would accept an agreement and undertaking from petitioner's mortgagees assuring the refund of any excess charges in those proceedings. In the alternative, it said it would permit petitioner to file an agreement and undertaking to assure the refund of any excess charges for those amounts collected in Docket No. G–18671 between 8 cents and 11 cents under its Rate Schedule No. 1.[6]

In an application for rehearing (J. App. 44a–65a), which the Commission treated as a motion for reconsideration (J. App. 65a–68a), Dorchester con-

[5] The Commission had originally required the trust fund as a method of insuring that Dorchester, despite its alleged financial difficulties, would be in a position to refund to its customers any sum due them if the just and reasonable rate should be found to be less than the 17.598 cents per Mcf which Dorchester was collecting (see J. App. 2a–6a).

[6] Some six months later, petitioner applied to the Commission for the release of $1,715,929.70 from the trust fund in accordance with the November 19 order. Petitioner's motion was granted by order issued June 16, 1965, in Docket No. G–18671 (not reported). Under that order petitioner will also be allowed to make use of an additional $360,000 annually in the future.

tended, *inter alia,* that in the area rate proceeding it could not receive the relief it needed from its allegedly low contract rate of 7.1463 cents per Mcf for sales to Natural. It also asserted that decision in the area rate proceeding will be long delayed thus denying it relief. The Commission in its order of January 19, 1965, denying reconsideration explained (J. App. 67a; 33 FPC 88–89):

> In arguing that it will not receive any relief in the area proceeding under Section 5(a) with respect to its sale to Natural, Dorchester assumes that we do not have the power in such a proceeding to grant any relief under Section 5(a) to which a party may be entitled. We are unwilling to make any such assumption. The very questions raised here by Dorchester as to action under the *Sierra* doctrine [*Federal Power Commission* v. *Sierra Power Co.,* 350 U.S. 348] to relieve producers of low fixed price contracts are involved in the Permian Basin area rate proceeding in Docket No. AR61–1, which is now pending before us on exceptions to the examiner's decision. Such questions will, no doubt, also be raised in the Hugoton-Anadarko proceeding. In the area proceeding Dorchester will receive full consideration of its claims to relief under Section 5(a). [Footnote omitted.]
>
> Dorchester suggests that decision in the area proceeding will not be reached for many years, while a final decision in the individual hearing requested by Dorchester could be made in a matter of six months. Aside from the question of the accuracy of Dorchester's prediction, we believe that the novel and intricate question of

> the circumstances, if any, in which producers should be permitted to seek rates higher than those permissible under their contracts with a pipeline lend themselves at least initially to an area proceeding where we can evaluate the effect of one such action upon other sales agreements in the area.

Subsequently, the Commission did determine the *Sierra* question in the *Permian* case, *supra*, and specifically granted producers with low contract rates special relief (see pp. 13–14, *infra*).

The Commission, in its January 19 order, also explained why it had set a number of producer-rate cases for individual hearing subsequent to the commencement of certain area rate proceedings (J. App. 68a). It pointed out that those cases involved situations where increases in other producer rates in the area would be triggered if the producer rates set for hearing were allowed to go into effect subject to refund. Since such triggering might involve millions of dollars in higher gas costs, the Commission, in those instances, took extraordinary action.[7]

Dorchester sought review of the Commission's order of November 19, 1964, in the Court of Appeals for the Third Circuit. On November 23, 1965, the court

[7] In the few triggering cases which have actually gone to hearing (most producers have chosen to reduce their filed rates to non-triggering levels instead of defending triggering rates in a separate hearing), the Commission has sought only to determine whether there was any support for the triggering increases. It has not sought to determine the just and reasonable rates under such contracts. *Southeastern Public Service Company*, 31 FPC 973, 975.

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affirmed the Commission's order in a *per curiam* opinion (Pet. App. 8a–9a). It noted that

> * * * [i]n refusing petitioner an individualized investigation of its rates, [the Commission] determined that comprehensive investigation was preferable to "piece-meal" inquiry. It concluded that under the Act its primary function was to promote the paramount interest of the consuming public by establishing rate stability in this producing area.

The court held "that the Commission acted properly and within a permissive area of administrative conduct wherein it reasonably exercised its discretion upon substantial and sufficient basis in fact and law" (Pet. App. 9a).

Following the Commission's denial of Dorchester's request for a separate Commission investigation of its rates, Dorchester, on January 29, 1965, applied to the Presiding Examiner in the Hugoton-Anadarko area rate proceeding for a definitive ruling as to its right to present in that proceeding evidence relating to its individual company cost of service—evidence which allegedly would show that its contract rate with Natural, reflected in Rate Schedule No. 2, was too low (J. App. 97a–104a). The examiner denied Dorchester's request on March 9, 1965 (J. App. 104a–105a), and the Commission denied an appeal therefrom on April 13, 1965 (Pet. App. 12a–14a). In its order of April 13 the Commission said (Pet. App. 13a):

> * * * *Sierra* makes clear, however, that even in the context of individual company rate making for pipelines or public utilities the issue is

not whether the contractual limitations on rate filings will result in affording the company less than a fair return, but whether the rate "is so low as to adversely affect the public interest" (350 U.S. 348 at 355). Thus, without here determining what showing would be essential to "the protection of the public interest, as distinguished from the private interests" of Dorchester or other producers in context of an area rate proceeding it is clear that introduction of an individual company cost of service by Dorchester would not be of any greater relevance to a determination of the *Sierra* issue than to the fixing of the area rate itself.

To the extent that Dorchester is claiming that it is legally or equitably entitled to special relief over and beyond that to be afforded all other respondents who may have contractual inhibitions on filing rates up to the levels specified in our area rate determination, it is sufficient to add that Dorchester must await the fixing of the area rate or rates before it can properly present such a claim. * * *

Reconsideration was denied by order of June 7, 1965 (Pet. App. 15a). Dorchester's petition to review the order of April 13 in the court of appeals was dismissed on as premature January 19, 1966 (Pet. App. 10a–11a).

ARGUMENT

1. In these proceedings Dorchester has sought relief from the rate at which it has contracted to sell gas and which it now finds to be unprofitably low. To that end, Dorchester sought to invoke the Commission's power, under Section 5(a) of the Natural Gas

Act, to alter rates found to be unjust or unreasonable. Because Section 5(a) authorizes the Commission to proceed "upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company" but does not give explicit standing to gas producers, Dorchester could only furnish the Commission with relevant information and request that it initiate an investigation on its own motion. See *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332, 344–345. Moreover, "[i]n such circumstances the sole concern of the Commission would seem to be whether the rate is so low as to adversely affect the public interest"; the mere fact that a contract is unprofitable does not make it "unjust" or "unreasonable." *Federal Power Commission* v. *Sierra Pacific Power Co.*, 350 U.S. 348, 355. It is therefore evident that Dorchester's petition was an appeal to the Commission's discretion, and the question here presented is whether there was an abuse of discretion in the Commission's determination that the public interest would be better served by considering Dorchester's rates in the context of a comprehensive area investigation than by individualized or piecemeal inquiry. The court of appeals found that "the Commission acted properly and within a permissive area of administrative conduct wherein it reasonably exercised its discretion upon substantial and sufficient basis in fact and law" (Pet. App. 9a). That ruling does not call for further review by this Court.

Dorchester urges that it was entitled to have the Commission initiate a separate proceeding, based upon Dorchester's individual cost-of-service, to determine

whether the public interest requires relief from a low rate established by its sales contract, *i.e.*, that it should not be required to await completion of the area rate proceeding in which the same rate is in issue. But an agency has broad discretion to determine priorities in the handling of its workload, *Federal Communications Commission* v. *WJR, The Goodwill Station, Inc.*, 337 U.S. 265, 282; specifically, this Court has sustained the authority of the Federal Power Commission to defer individual producer rate proceedings while it is engaged in the complex area proceedings, *Wisconsin* v. *Federal Power Commission*, 373 U.S. 294, 313. Such authority seems particularly clear where the applicant's claim must be determined solely by reference to the public interest.

In reaching its determination, the Commission was clearly entitled to take into account, as it did, that even if a separate investigation of Dorchester's rates were initiated, any relief would have to await the completion of that investigation and any action taken "would be applicable only until such time as the Commission renders a decision" in the pending area case (J. App. 42a). Both of these considerations tended to indicate that relatively little was to be gained by the detour Dorchester urges. Moreover, since the Commission had already determined (see *Wisconsin* v. *Federal Power Commission*, 373 U.S. at 302) that the "'interest of consumers and the exigencies of regulation will be better served in rate proceedings brought on an area basis rather than on an individual company basis,' and that the area method would lead to 'more effective and expeditious regulation of the producer

sales'", it could properly decline to be side-tracked by an application for an individualized investigation. Surely, in these circumstances it cannot be said that the Commission abused its discretion "in deciding how best to allocate its resources" (*id.* at 313–314).

2. Petitioner claims that this case presents substantial questions as to the scope of *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332, and *Federal Power Commission* v. *Sierra Pacific Power Co.*, 350 U.S. 348. But the decisions of the court below make no reference to those cases or to the issues petitioner seeks to raise. The short of it is that neither the Commission nor the court of appeals has purported to decide anything with respect to petitioner's ultimate right to relief under *Mobile* or *Sierra*.

All that the Commission has decided is that (1) it will not exercise its discretion to initiate a separate proceeding under Section 5(a) to determine petitioner's just and reasonable rates when the just and reasonable rates for its principal sales are already in issue in a pending area case; and (2) that, although it will permit petitioner to contend in the area proceeding that rates limited by contract to low prices should be raised (as it has in fact decided in the *Permian* case [9]), it will not permit the introduction of individual company cost-of-service presentations at least until the basic determinations for the area as a whole have been made. All that the court of appeals held was (1) that the Commission acted within the

[9] See the excerpts from the opinion of the Commission in the Permian area case (Docket AR61–1) set forth in the Appendix hereto.

permissible area of administrative discretion when it refused to initiate an individual rate case for petitioner that would overlap the area proceeding in which its major sales were already under consideration (Pet. App. 8a–9a) (see *Wisconsin* v. *Federal Power Commission*, 373 U.S. 294, 313–314), and (2) that it was premature for a court to pass upon the exclusion of a particular type of evidence while the administrative proceeding is still pending before the Commission (Pet. App. 10a–11a).[9] Neither of these holdings can be thought to raise questions warranting plenary consideration by this Court.

Nor does the petition present any question of importance to the administration of the Natural Gas Act. Throughout the decade since the Court's decisions in *Mobile* and *Sierra* not a single electric utility or natural gas pipeline has sought to have the Commission initiate proceedings to authorize it to charge more than its contractually authorized rates. Nor has any independent producer, other than Dorchester, invoked *Mobile* and *Sierra* outside the context of an area rate proceeding. This is not to say that the Commission has overlooked the problem faced by producers with low contractually fixed rates. As petitioner itself points out, in the *Permian Basin* case (the first area decision) the Commission invoked *Sierra* to establish a 9 cent floor—finding that rates below that figure would tend to impair gas exploration and development to the detriment of the public interest

[9] See *Federal Power Commission* v. *Metropolitan Edison Co.*, 304 U.S. 375, 383–385; *cf.*, *Federal Power Commission* v. *Arkansas Power & Light Co.*, 330 U.S. 802.

(Pet. App. 16a–18a). Moreover, in that same decision, the Commission established a procedure whereby individual producers who can demonstrate that the area rate is confiscatory as applied to them or who can otherwise demonstrate that they are entitled to special treatment, can secure appropriate relief. *Area Rate Proceeding* (Opinion No. 468, Docket Nos. AR61–1, *et al.*, issued August 5, 1965). The relevant portions are reproduced in the Appendix, *infra* pp. 15–21.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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MARCH 1966.

APPENDIX

FEDERAL POWER COMMISSION

Opinion and Order Determining Just and Reasonable Rates for Natural Gas Producers in the Permian Basin

Docket Nos. AR61–1 *et al.* (Opinion No. 468, August 5, 1965)

* * * * *

PETITIONS FOR SPECIAL EXEMPTION FROM THE AREA RATES

We have already discussed *supra* at pages 11–19 why we believe that maximum area rates can and should be established as the just and reasonable rates applicable generally to the sales of natural gas in the Permian Basin. The question remains what procedure or procedures should be adopted for the benefit of those respondents who, by reason of special circumstances, believe they can demonstrate that they are entitled to variant treatment.

First, we should frame the limits of the problem. We are not here treating sales to be permanently certificated after the effective date of this decision. In the future it would normally not be in the public interest to certificate sales of gas (including gas flowing under temporary certificates) at initial prices above the applicable area rate. While we do not visualize any reason for certifying any new sales at prices above the just and reasonable ceiling price, any producer unwilling to accept a certificate at the appropriate ceiling will have an opportunity to show in the hearing on his certificate application the spe-

cial circumstances which he believes warrant making an exception in his case in the public interest.

The problem for our immediate attention thus relates solely to gas presently being sold under outstanding certificates. Our decision herein has a double impact on the gas presently flowing in interstate commerce from producers in the Permian Basin. It fixes a price for the future, and it determines the basis for refunds for past periods. We shall first discuss the basis for permitting special exceptions to the area rate with respect to future rates for flowing gas and later discuss the question of relief from refund requirements.

It would seem clear that where a producer who has contracted for an above-ceiling price can show that his out-of-pocket expenses in connection with the operation of a particular well are greater than the revenues under the applicable area price, he should be entitled to appropriate relief, and there may be other circumstances where a producer as a matter of law or in the public interest would be entitled to some relief.

We need not and cannot here specify all of the special circumstances which may serve as a basis for exceptions to the area rate. It is clear however that confiscation does not result merely because, as a result of high costs or low production, a given producer cannot, at the area price, recover his expenses for his unsuccessful exploration and development costs and earn the 12 percent overall return on producer investment rate base which we have adopted as the appropriate return to attract capital on an area-wide basis for gas exploration and development. We recognize that any amounts received by the producer for flowing gas above out-of-pocket expenses would be available to finance further exploration, but no producer

has a constitutional right to a price for the future which will enable him to expand his venture in the interstate gas business and the inability to earn such allowances at the area ceiling cannot be characterized as confiscation. As the Court of Appeals for the District of Columbia recently observed, "the Commission is not required to subsidize high cost producers with consumers' money." *Atlantic Refining Co.* v. *F.P.C.*, 316 F. 2d 677, 680 (CADC, 1963); see also *Callery Properties, Inc. et al.* v. *F.P.C.*, 335 F. 2d 1004 (CA5, 1964). The same rule certainly applies to the development of reserves which are held off the market for speculative purposes.

Even in situations where producers are able to show that they are entitled to relief from the obligation to continue to sell flowing gas at the appropriate area ceiling, in most cases it may be sufficient to permit them to abandon their unprofitable sales. Unlike the case of some public utilities which cannot abandon service without harming the public dependent thereon, we will seldom have a situation in which a particular producer's abandonment of some or all of its sales in the area will significantly affect the purchasing pipeline, to say nothing of the ultimate gas consumer. There may, however, be some exceptional situations where abandonment could be shown to be detrimental to consumers, or where the producer could demonstrate that some other form of relief would best serve the interests of the public as well as his own.

The remaining confiscation question is with respect to refunds for past periods. On a composite basis the area ceiling prices for both flowing and new gas provide a reasonable allowance for exploration and development and production operating expenses in addition to a 12 percent return on the producing investment. As we stated earlier, a claim that it would

be confiscatory to require the refund of amounts a producer has collected above the area rate cannot be supported by the fact that a particular producer in the past has chosen to spend more than a reasonable allowance in what proves to be unsuccessful or marginal exploratory efforts or by the fact that unit production costs are high because for speculative purposes or other reasons the producer has withheld from production gas that he has discovered. On the other hand it seems clear that a producer should not be required to make refunds for past periods which would deprive him of amounts sufficient to cover his out-of-pocket operating expenses in the Permian Basin for such period. We need not consider other situations at this stage of the proceeding; it is sufficient to note that here too we will entertain petitions for special relief, and that the dockets involved will remain subject to the existing interest obligations pending their resolution.

We need not speculate further here as to the exact circumstances in which special relief may be warranted from the area price maximums for some or all of a producer's sales, or the appropriate nature of such relief. Any producer claiming that he is entitled to special relief from the maximum rate set for any of his Permian sales or from the refund obligations imposed herein may file a petition for such relief with the Commission consistent with the general guidelines set forth herein. Any such petition will be disposed of as promptly as possible. Since the petitioner will bear the burden of showing that he is entitled to special relief the producer (unless authorization is granted for temporary abandonment) will not be relieved of his obligation to continue service at the appropriate just and reasonable rate pending the

determination of his petition. See *The New England Divisions* case, 261 U.S. 184, 198–199 (1923).

* * * * *

MINIMUM RATES

The examiner found that certain contracts in the Permian Basin were "below the revenue standards" he adopted. While the record is not clear on this point many of these contracts presumably were negotiated at a time when natural gas was a by-product of the search for oil and the interstate markets had not yet developed.

To aid in rectifying the situations where producers had contractually precluded themselves from obtaining an increase in price of their gas, the examiner authorized the seller, with the consent of his buyer, to increase his rates up to the minimum established in the decision; to wit, 9 cents per Mcf of gas-well gas and 7 cents per Mcf for casinghead gas.

The Supreme Court in *F.P.C.* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956),[48] recognized that this Commission possesses the power to authorize rate increases despite contractual limitations to the contrary. However, the Court was careful to point out that such an order required as a foundation more than the mere fact that, because of an improvident bargain, a utility was receiving less than a fair price for its product. The Court said (at p. 355): "In such circumstances the sole concern of the Commission would seem to be whether the rate is so low as to adversely affect the public interest—as where it might impair

[48] Though this case involved the Federal Power Act, the Court noted that: "The pertinent provisions of the Federal Power Act, * * * are §§ 205 (c), (d), and (e), and 206(a), which are substantially identical to §§ 4 (c), (d), and (e), and 5(a), respectively, of the Natural Gas Act." (at pp. 350–351).

the financial ability of the public utility to continue its service, cast upon other consumers an excessive burden, or be unduly discriminatory."

It is thus clear that the test of whether rates should be increased is not one of private equities but of the public interest. It is also clear that the examples set forth by the Court are not, and were not intended to be, the only instances where public interest would justify an authorization to increase rates in contravention of a contract. In addition it should be noted that the *Sierra* case was decided in the context of an individual company rather than an area rate approach.

We concur with the examiner in his conclusion that the establishment of minimum rates in this case is in the public interest and that the price impact on the consumer will be *de minimis*. While on the one hand, the establishment of a maximum price for the area is essential so that the ultimate consumer does not pay a price which is excessive in relation to group costs and other relevant considerations, we believe that a minimum price also constitutes an integral part of the area rate approach. The rate received by a producer must not be so low as to prevent or retard further exploration and thereby decrease possible discovery of gas reserves which will be needed by consumers. The amount of additional revenues so provided, at the most $250,000 annually, will have no significant impact on consumers but the relief afforded the individual producers involved may be important to their continuation in the search for additional gas supplies needed to meet the growing needs of the consuming markets.

Although we have agreed with the examiner's conclusion as to the need for a minimum rate, we believe that his remedy, which would not allow the producer

with sub-minimum rates to raise them to the minimum unless he secured the approval of his purchaser, is not sufficient. Renegotiation of contracts resulting in increased rates which do not exceed the area rate would be proper without any action by this Commission, so that the examiner's remedy would avail nothing.

We therefore deem it necessary and appropriate to establish a minimum rate in this area of 9 cents per Mcf for gas of standard pipeline quality, with adjustments from the minimum price to reflect any deviations from the quality standards established herein, and to hold that the minimum rate herein established may be filed without purchaser approval at any time after this order becomes final.

* * * * *

U.S. GOVERNMENT PRINTING OFFICE:1966